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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/848,988	05/04/2001	Christina Bauer-Plank	F7534(V)	8753
201 7590 05/15/2007 UNILEVER INTELLECTUAL PROPERTY GROUP 700 SYLVAN AVENUE, BLDG C2 SOUTH ENGLEWOOD CLIFFS, NJ 07632-3100			EXAMINER PADEN, CAROLYN A	
			ART UNIT 1761	PAPER NUMBER
			MAIL DATE 05/15/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

09/848,988

Applicant(s)

BAUER-PLANK ET AL.

Examiner

Carolyn A Paden

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 7-19-04.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on July 19, 2004 has been entered.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Asahi (JP 7,087,889) and of record.

Asahi discloses a plastic oil in water emulsion containing fats and oils and an emulsion (including citric acid monoglyceride. The claims appear to differ from Asahi in the recitation that the emulsion is pourable and useful in frying. Although the composition is not described as pourable, one would have anticipated this feature to be inherent to a heated emulsion

composition. The composition is not described as a frying composition but the intended use of the product does not alone constitute a patentable distinct product. In addition, these are preamble limitations that do not carry any weight in product claims. Although the chain length of the fatty acids esterified to the mono-glyceride is not described, one of ordinary skill in the art would have anticipated this range because the chain length is typical to what is normally found in neutral fats.

Claims 1, 2, 8 and 11, 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gunsted (RD 283064), labeled XP-002177266 and of record.

Gunsted discloses 60% fat spreads made using citric acid esters of monoglycerides. These compositions are used in open pan frying and are spatter-free. The chain length of the citric acid mono-ester would be expected to fall within the range of the claims because that range is typical for natural fatty acids. The tradenames used for the citric acid ester do not alter the chemical composition of the compound. The claims appear to differ from Gunsted in the suggestion that the composition is pourable. But this aspect of the product would be anticipated at elevated temperatures. Further preamble limitations do not alone carry any weight in product

claims. The process of claim 14, where oil and water are prepared and mixed, is described in the document.

Claim 1, 6, 8, 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Madsen J Grindsted (RD 239018) labeled XP 002150222 and of record.

Madsen discloses frying margarine with low salt content, citric acid ester of monoglycerides, monoglycerides and soy bean lecithin that gives good anti-spattering properties. The claims appear to differ from Madsen in the suggestion of being pourable. It would have been obvious at the time of applicants invention to utilize the composition of Madsen at a higher temperature in order to be able to pour it. In addition preamble limitations to not carry any weight in product claims.

Claims 1-7, 9-12 and 14 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-9 of U.S. Patent No. 6,517,884. Although the conflicting claims are not identical, they are not patentably distinct from each other because it is not seen that there is a patentable distinction between a pourable emulsion and a squeezable one.

Bauer-Plank (6,517,884) discloses a water and oil emulsion that has anti-spattering agents and contains no native soy lecithin. Citric acid esters are used as emulsifiers in this product. The claims appear to differ from the reference in the suggestion of the Boswick value but Bauer-Plank suggests that this value indicates that the product is squeezable and pourable. Thus it would have been obvious to one having ordinary skill in the art to utilize the product of Bauer-Plank as the pourable frying composition and process of the claims.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re*

*Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Applicant has provided evidence in this file showing that the invention was owned by, or subject to an obligation of assignment to, the same entity as the Bauer-Plank patent at the time this invention was made.

Accordingly, Bauer-Plank is disqualified as prior art through 35 U.S.C. 102(e), (f) or (g) in any rejection under 35 U.S.C. 103(a) in this application. However, this applied art additionally qualifies as prior art under another subsection of 35 U.S.C. 102 and accordingly is not disqualified as prior art under 35 U.S.C. 103(a).

Applicant may overcome the applied art either by a showing under 37 CFR 1.132 that the invention disclosed therein was derived from the inventor of this application, and is therefore, not the invention "by another", or by antedating the applied art under 37 CFR 1.131.

Claims 1-7, 9-12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bauer-Plank (6,517,884) and of record.

Bauer-Plank (6,517,884) discloses a water and oil emulsion that has anti-spattering agents and contains no native soy lecithin. Citric acid esters are used as emulsifiers in this product. The claims appear to differ from the reference in the suggestion of the Boswick value but Bauer-Plank suggests that this value indicates that the product is squeezable and pourable. Thus it would have been obvious to one having ordinary skill in the art to utilize the product of Bauer-Plank as the pourable frying composition and process of the claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on (571) 272-1398 or by dialing 571-272-1700. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Carolyn Paden*

**CAROLYN PADEN** 5-7-07  
**PRIMARY EXAMINER** 1761